

1
2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Matthew C. Davidson,,) No. CV 13-004-TUC-FRZ (DTF)
10 Petitioner,) **ORDER**
11 vs.)
12 Susan J. McClintock,)
13 Respondent.)
14

15 Before the Court for consideration is a Petition for Writ of Habeas Corpus brought
16 pursuant to 28 U.S.C. § 2241, *pro se*, by Petitioner Matthew C. Davidson, currently confined
17 at the Federal Correctional Institution in Safford, Arizona, and the Report and
18 Recommendation of the Magistrate Judge recommending dismissal.

19 This matter was referred to Magistrate Judge D. Thomas Ferraro, pursuant to the
20 provisions of 28 U.S.C. § 636(b), Rule 72, Fed.R.Civ.P., and Local Rules 72.1 and 72.2 of
21 the Rules of Practice of the United States District Court for the District of Arizona, for
22 further proceedings and Report and Recommendation.

23 Magistrate Judge Ferraro issued his Report and Recommendation, recommending that
24 the Court dismiss the Petition for Writ of Habeas Corpus and deny a certificate of
25 appealability.

26 Because Petitioner is contesting the legality of his sentence, his claim falls within the
27 parameters of 28 U.C.S. § 2255, as set forth in the detailed factual and legal analysis by
28 Magistrate Judge Ferraro.

1 Petitioner was convicted on November 3, 2004, of being a felon in possession of a
2 firearm – armed career criminal, conspiracy to obstruct justice, and obstruction of justice.
3 The jury found that he had six prior convictions for violent felonies. The sentencing judge
4 found Petitioner was an armed career criminal and sentenced him to 235 months
5 imprisonment.

6 The Report and Recommendation issued by Magistrate Judge Ferraro sets forth the
7 factual and procedural history of Petitioner's federal and underlying state proceedings and
8 convictions at issue and provides a thorough analysis of the claims and legal standards at
9 issue.

10 Magistrate Judge Ferraro found that Petitioner has failed to demonstrate that he
11 qualifies for the § 2255 safety valve; and that under current law, Petitioner has four prior
12 predicate crimes for purposes of the Armed Career Criminal Act (ACCA), 18 U.S.C. §
13 924(e)(1). Judge Ferraro further found that Petitioner has not established factual innocence
14 as to any of the predicates. Moreover, the legal basis for Petitioner's claim was available
15 prior to his original 28 U.S.C. § 2255 motion, and thus, the Petitioner had an unobstructed
16 procedural opportunity to present this claim in a prior proceeding. Magistrate Judge Ferraro
17 therefore concluded that the Court does not have jurisdiction over the present Petition and
18 recommends, accordingly, that the District Court dismiss the Petition for Writ of Habeas
19 Corpus and deny any request for a certificate of appealability.

20 The parties were advised that, pursuant to Federal Rule of Civil Procedure 72(b)(2),
21 any party may serve and file written objections within fourteen days of being served with a
22 copy of the Report and Recommendation, and that a party may respond to the other party's
23 objections within fourteen days.

24 The Petitioner filed a timely Objection to the Report and Recommendation, to which
25 the Government filed a response.

26 Before the Court are the Petition (Doc. 1), Respondent's Answer and Supplemental
27 Brief (Doc. 10, 25), Petitioner's Reply and Supplemental Brief (Docs. 11, 15); the Report and
28

1 Recommendation (Doc. 30); Petitioner's objections (Doc. 32) and the Government's
2 response thereto (Doc. 33).

3 The Court finds, after consideration of all matters presented and an independent
4 review of the record herein, that the Petition for a Writ of Habeas Corpus shall be denied and
5 this action be dismissed in accordance with the Report and Recommendation.

6 Based on the foregoing,

7 **IT IS HEREBY ORDERED** that the Report and Recommendation (Doc. 30) is
8 hereby **ACCEPTED** and **ADOPTED** as the findings of fact and conclusions of law by this
9 Court;

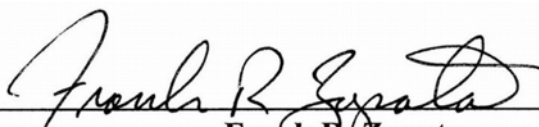
10 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus (Doc. 1)
11 is **DENIED** and this action is hereby **DISMISSED**;

12 **IT IS FURTHER ORDERED** that all pending matters are **denied as moot**;

13 **IT IS FURTHER ORDERED** that any request for certificate of appealability shall
14 be denied in accordance with these findings;

15 **IT IS FURTHER ORDERED** that the Clerk of Court is directed to enter judgment
16 accordingly.

17
18 DATED this 30th day of March, 2015.

19
20 
21 **Frank R. Zapata**
22 **Senior United States District Judge**
23
24
25
26
27
28